

DEPARTMENT OF COMMERCIAL TAXES, KERALA
PROCEEDINGS OF THE AUTHORITY FOR CLARIFICATION
U/s.94 OF THE KERALA VALUE ADDED TAX ACT, 2003.

Members present are:

1. Dr. A. Bijikumari Amma.
Joint Commissioner (Law),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.

2. N. Thulaseedharan Pillai.
Joint Commissioner (General),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.

3. V.J. Gopakumar.
Deputy Commissioner (General),
Office of the Commissioner of Commercial Taxes, Thiruvananthapuram.

Sub : KVAT Act, 2003 – Clarification U/s 94 – Whether transaction of goods between own units of MRCMPU having different TIN and same PAN is taxable or not – Orders issued.

Read : Application from M/s. Malabar Regional Co-operative Milk Producers' Union, Kunnamangalam, Kozhikode dtd. 8/2/2016.

ORDER No.C3/5444/16/CT DATED 13/4/2016.

1. M/s. Malabar Regional Co-operative Milk Producers' Union (MRCMPU), Kunnamangalam, Kozhikode, has preferred an application U/s 94 of the Kerala Value Added Tax Act, 2003 seeking clarification as to whether transaction of goods between own units of MRCMPU having different TIN and same PAN is taxable or not under the Act.

2. The applicant is a dairy farmers' organization under the Kerala Co-operative Societies Act., located in the six northern districts of Kerala. MRCMPU have various dairy units viz. Palakkad Dairy, Kozhikode Dairy, Kannur Dairy, Kasaragod Dairy and Wayanad Dairy which hold different TIN for administrative convenience, all of them are owned and managed by MRCMPU, having a single PAN card, having a single board of directors. The applicant is transferring the commodities dealt with by them i.e. milk, milk products, etc. as stock transfer between their own units and the applicant contends that no sale is effected.

3. The applicant would contend that the basic definition of sale presupposes two different persons (the buyer and the seller). In the instant case, the single entity MRCMPU cannot be said to have made a sale to itself. The applicant has referred to Section 2(xliii) of the Kerala Value Added Tax Act, 2003 and would contend that in the instant case there is no transfer from one person

to another. Moreover this transfer does not attract various definitions given in the Act with relation to either definition of 'sale' or in the definition of 'purchase', or definition of 'turnover', 'total turnover' or 'taxable turnover' etc. Moreover as per the charging Section 6 of the Act, tax is leviable only either on sales or on purchases; hence no tax is leviable on a branch transfer. Further as per Section 6A of the Central Sales Tax Act, an assessee even if registered under two different States with separate TIN can do inter-state branch transfer and it is not taxable. The basic condition for a sale that there must be a buyer and seller is distinctly absent in the case of these transfers i.e. Kannur unit cannot be treated as having sold ghee and cream to Kozhikode unit when both are branch units of a single co-operative society. For sale to be effective there must be passing of property from one person to another and not from one hand to another hand of same person.

4. The applicant has relied on the decision of the Kerala High Court in Govt. Wood Workshop Vs State of Kerala (1998 69 STC 62) and would contend that in the instant case there is no seller and there is no buyer as goods are passed only between the same entity. There is therefore no sale of goods at all.

5. The applicant has requested to clarify as to whether the transaction of transfer of goods between own units of MRCMPU having different TIN and same PAN is taxable or not under the Kerala Value Added Tax Act, 2003.

6. The authorised representative of the applicant was heard in the matter and the contentions raised were examined.

7. In the instant case, the dealer had voluntarily filed the application for taking out separate registrations for each place of business under Section 20(3) of the Kerala Value Added Tax Act, 2003. As such, the general rules applicable under the Act will not be applicable to the instant case which is of a special nature. The said sub-section provides that the Commissioner may *treat each of such places of business as a separate unit for the purposes of levy, assessment and collection of tax*. So, the general principle that one cannot transfer ownership to himself is not applicable in the instant case. Here, as per law, each unit acquires the character of a separate legal entity and as per the statute, for the purpose of levy, assessment and collection of tax, each unit is to be treated as a separate one, and the transfer among such units can only be treated as a sale and not as stock transfer. So, in view of the above said specific statutory provision and considering the fact that it became applicable only because of an application filed by the dealer, the applicant cannot turnaround later and raise the claim that

only a part of the said provision is applicable to them and not the whole provision, that too according to their whims and fancies.

8. So, in view of the specific statutory provision that has become applicable only because of the voluntary application filed by the dealer, it is hereby clarified that the transfer of goods among different units of MRCMPU can only be treated as a sale, since each unit acquires the characteristic of a separate legal entity.

The issues raised above are clarified accordingly.

Dr. A. Bijikumari Amma
Joint Commissioner (Law)

N. Thulaseedharan Pillai
Joint Commissioner (General)

V.J. Gopakumar
Deputy Commissioner (General)

To,

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